Saskatchewan
Labour

Occupational
Health & Safety

Preventing Harassment:

An Employer's Guide and Sample Policy

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Terms and abbreviations

allegation
(*n.*, a statement or assertion that has not been proved)

alleged
(*adj.*, suspected but unproved)

best practice
(*expression*, wisest action to take based on current knowledge)

complainant
(*n.*, a person making a complaint of harassment)

in good faith
(*expression*, refers to something done with good intentions, honestly)

in bad faith
(*expression*, refers to something done dishonestly and/or with the intention to hurt someone else)

respondent
(*n.*, the person who has been accused of harassment)

Occupational Health Officer
(OHO)

Occupational Health Committee
(OHC)

Occupational Health & Safety Division
(OHSD)

The Occupational Health & Safety Act, 1993 (OHS Act)

The Occupational Health & Safety Regulations, 1996 (OHS regulations)

The Occupational Health & Safety Act and regulations (OHS Act and regulations)

Introduction

Purpose of this guide

This is an employer's guide for dealing with harassment as defined in *The Occupational Health and Safety Act, 1993 & Regulations*. This guide provides information on the best way for employers to carry out their duties concerning workplace harassment.

Meaning of harassment

The OHS Act[1] defines *harassment* as any objectionable conduct, comment or display by a person that:

- is directed at a worker,
- is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status family status, disability, physical size or weight, age, nationality, ancestry or place of origin, and
- constitutes a threat to the health or safety of the worker.

When objectionable conduct is not based on one of the prohibited grounds, such as race, creed, religion etc., it is not harassment within the meaning of the OHS Act. This type of objectionable conduct is often referred to as *personal harassment*. The harassment requirements of the OHS Act do not apply to personal harassment.

In this guide whenever the word harassment is used, it means harassment within the meaning of the OHS Act, except where the phrase personal harassment is specifically used. A discussion of personal harassment can be found on page 7.

Purpose of OHS legislation on harassment

Occupational Health and Safety (OHS) legislation protects workers from workplace harassment that may affect their health and safety. Unlike the Saskatchewan Human Rights Code, the OHS Act does not contain provisions to provide compensation to workers who have been harassed. The OHS Act and regulations require employers to take action to:

- prevent harassment from occurring,
- stop harassment when it does occur, and
- develop and implement a harassment policy that meets the requirements of the OHS regulations.[2]

[1] Section 2(l) of the OHS Act.

Employers' legal duties

The Act states that every employer has a general legal obligation to ensure, insofar as is reasonably practicable, that its workers are not exposed to harassment at the place of employment.[3]

The regulations require all employers (large and small) to develop and implement a written harassment policy. The requirements for developing and implementing a harassment policy are set out in section 36 of the regulations and are discussed in this guide. Employers must also ensure that their policies are implemented and that they are effective in preventing and ending harassment.

Employers should also look beyond what is legally required and take additional action to create a respectful working environment.

Preventing harassment

To ensure that workplaces are free of harassment employers must act in advance to prevent harassment. An important first step of acting in advance is for the employer to make clear to its workers that it is committed to ensuring no worker is subjected to harassment. This commitment must be stated in the employer's harassment policy.[4]

Employers' commitment must be real and not merely a statement. As a best practice, employers should not only implement a harassment policy (for dealing with harassment complaints) but also a harassment prevention program for preventing harassment. A harassment prevention program should include the elements listed below.

Employer commitment

Harassment policies and harassment prevention programs work effectively only if employers are really committed to creating a harassment free workplace and workers are aware of that commitment. Employers must show they are committed to having a harassment free workplace. This is the first and most important step in developing an effective harassment policy and harassment prevention program.

An employer can show this commitment by:

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[2] Section 36 of the OHS regulations.

[3] Section 3(c) of the OHS Act states: 3 Every employer shall: (c) ensure, insofar as is reasonably practicable, that the employer's workers are not exposed to harassment at the place of employment;

[4] Section 36(1)(c) of the regulations requires the harassment policy to include: a commitment that the employer will make every reasonably practicable effort to ensure that no worker is subjected to harassment;

- assigning top management to the development and implementation of the harassment policy,
- having top management express at meetings the importance of a harassment free workplace and support the company policy,
- developing a policy statement that reflects the employer's commitment,
- providing workers and supervisors with harassment prevention training,
- acting promptly to end any harassment and prevent its recurrence,
- reviewing the adequacy and effectiveness of the policy regularly and in consultation with the Occupational Health Committee (OHC), and
- protecting workers from reprisal (retaliation) for making a harassment complaint or behaving in a way that reflects the harassment policy.

Supervisor training and commitment

Supervisors must be trained to:

- set good examples and be positive role models,
- be alert to problems,
- receive harassment complaints, and
- protect workers from reprisal.

Setting a good example

Supervisors need to understand the importance of their behavior and the influence it has in the workplace. Showing respect for workers at all levels is critical. Supervisors should never act in a way that could be seen as disrespectful or harassing. They should never approve of others acting that way.

Being alert to problems

Supervisors need to be aware of signs that harassment may be occurring. Signs of harassment may include: rumors, increased absenteeism, decreased motivation, reduced job performance and increased staff turnover. If a supervisor thinks harassment may be taking place, it is inappropriate to stand by and do nothing. The supervisor must act promptly and appropriately. This may include:

- speaking privately to the worker who is potentially being harassed to find out if they have experienced unwelcome behavior,

- speaking privately to the person whose conduct may be harassing (s/he may not be aware that his/her conduct is potentially offensive),
- directing workers to remove offensive material or displays that go against the OHS Act or the harassment policy of the workplace,
- bringing serious concerns to the attention of upper management, and
- holding an awareness session on harassment.

Receiving harassment complaints

Those responsible for receiving harassment complaints should:

- explain the harassment policy to the worker,
- tell the worker the options for dealing with harassment as stated in the policy,
- advise the worker that the complaint will be kept confidential, and
- inform the worker that s/he will be protected from retaliation or reprimand for making the complaint (as long as there is no bad faith on the part of the complainant).

The supervisor receiving the complaint must take all complaints seriously. Workers should never be discouraged from pursuing or resolving a complaint in accordance with the policy.

The complaint should be processed in accordance with the policy. The complaint may be informally resolved or investigated if these are options in the employer's harassment policy.

Protecting workers from reprisal (retaliation)

The supervisor should protect the worker making the complaint where the worker could experience reprisal because s/he is making a complaint. This may include taking the following action before the investigation is complete:

- changing reporting lines,
- with the consent of the complainant, reassigning job duties or job location, and
- where the supervisor is not authorized to make changes, advising the supervisor's supervisor of the concern.

Consent of the complainant and the alleged harasser to significant changes in job duties or location before an investigation is complete is required to avoid the appearance that the changes are a reprisal for bringing a complaint or an unjustified form of discipline.

Worker training and commitment

Harassment policies must contain a statement that *every worker is entitled to employment free of harassment.*[5] The responsibility for having employment that is free of harassment falls to everyone in the workplace. If a worker is being harassed in the workplace, the employer is responsible to end the harassment. Also, all workers have a duty to refrain from causing or participating in the harassment of another worker.[6]

To be effective in preventing harassment, workers need to know their rights and responsibilities. They need to understand the kind of behavior that isn't acceptable in the workplace and the kind that is acceptable. They need to know what they should do if they are harassed or if they become aware that others are being harassed.

Workers must be assured that:

- they have the right to bring harassment concerns to their employer without fear of reprisal,
- they can have confidence that their concern will be addressed in a confidential and professional manner, and
- action will be taken to stop harassment where it is found.

Workers must also be aware of their personal responsibility to not cause or participate in harassment, as well as the consequences of not meeting that responsibility. If workers have been designated to receive complaints or facilitate the resolution of complaints, they must be properly trained to do these tasks.

Ways of increasing worker awareness and commitment

These are some of the ways that worker awareness and commitment can be encouraged:

- use an information meeting for all workers and supervisors to explain:
  - their rights and responsibilities under the OHS Act,[7]
  - the workplace's harassment policy and the process for making a complaint,
  - the types of behaviour prohibited by the policy, including behavior by third parties (clients, customers or contractors) that will not be tolerated,

[5] Section 36(1)(b) of the OHS regulations.
[6] Section 4(b) of the OHS Act.
[7] Reference should be made to section 3(c), 4(b) and 27 of the OHS Act and section 27 of the OHS regulations.

- tips for helping create a respectful workplace, e.g., what they might do when they are aware a coworker is being harassed,
- the process for investigating a harassment complaint and the provisions of the policy that ensure confidentiality, due process and fairness,
- the potential consequences to the offender when they cause or participate in harassment, and
- the employer's commitment to protect workers from reprisal (retaliation) for making a harassment complaint in good faith.

- ensure that all new workers receive orientation on harassment that includes all of the information above as well as information on the damage harassment can cause to a person's life,
- ensure that persons delivering the information understand the policy and make clear that the employer takes harassment seriously,
- where reasonably practicable, include harassment information in workers' handbooks or in a handy reference brochures,
- post the names of the people designated to receive harassment complaints, and
- display posters or other materials in highly visible workplace locations to remind workers and others that the workplace is committed to being a respectful and harassment free workplace.

Sample Workplace Slogans

Caring, Dignity and Respect for All

"___ Inc. is committed to a non-violent, harassment free workplace where everyone is treated with courtesy and respect" *or* "___ Inc. is committed to maintaining a workplace free of harassment where everyone is treated with courtesy and respect."

Videos and publications that provide examples of harassment, are available for loan from Saskatchewan Labour's Occupational Health and Safety Division.

Developing and implementing a harassment policy

The Act and regulations clearly indicate employers' responsibility to develop a written harassment policy and what should be included in the policy.

Consultation

In developing a policy, assessing its effectiveness and considering other means of preventing harassment, employers must seek input from their OHC.

In small workplaces that do not have an OHC or occupational health and safety representative, employers should ask workers for their input and ideas. An example of workers having input is asking them to review and comment on the policy before it is put into effect.[8]

Some benefits of consulting the OHC or workers include:

- committee members can be a resource of information and ideas, and
- committee support for the policy is essential in its implementation, and the OHC can assist in monitoring the effectiveness of the policy.

Defining harassment

OHS regulations require the policy to include a definition of harassment that includes the definition in the Act.[8] Harassment is defined in section 2(l) of the OHS Act.

Sexual Harassment

Sexual harassment is defined separately in many effective policies. This is a good practice since sexual harassment can take many forms. Most types of sexual harassment fall within the OHS Act's definition of harassment and may also be considered discrimination under *The Saskatchewan Human Rights Code*. One possible definition of sexual harassment is provided in the *sample harassment policy*.

Personal Harassment

Personal harassment is not based on one of the prohibited grounds, such as race, creed, etc., and is not included in the OHS Act. Some employers, however, choose to create a policy that includes certain types of personal harassment. The expanded definition may help create a more respectful and harmonious workplace.

[8] Section 36(1)(b) of the OHS regulations.

Here is an example of a definition of personal harassment that employers may wish to include in their policy.

"Personal harassment is unwelcome comments or actions directed at a worker, that is not necessarily based on race, creed or one of the other prohibited grounds described above, but is abusive and humiliating and interferes with a person's work performance, health, safety or well-being. It includes:

- *practical jokes which cause embarrassment, endanger safety or affect work performance negatively,*
- *vandalism of personal property,*
- *verbal abuse or threats,*
- *insulting, derogatory or degrading comments, jokes or gestures,*
- *refusing to work or cooperate with others, and*
- *unwelcome physical contact."*

Providing Examples

It is a good practice to include examples of the types of conduct that fall within the policy's definition of harassment.

Here are some examples of conduct that fall within the Act's definition of harassment:

- sexually suggestive comments or gestures,
- sexist or racist jokes that cause awkwardness or embarrassment,
- display of racist, sexist or other offensive material,
- unwanted physical contact, such as touching, patting or pinching,
- physical assault (including sexual assault), and
- openly excluding an individual from staff activities based on one of the prohibited grounds, such as a disability.

Here are some examples of conduct that are commonly included in harassment policies but are not based upon the grounds specified in the OHS Act:

- practical jokes which result in embarrassment or insult,
- vandalism of personal property,
- unsolicited or unwelcome physical contact, and
- written or verbal abuse or threats.

It may also be beneficial for the policy to provide examples of types of behavior that do not fall within the Act or policy's definition. The types of behavior frequently excluded from coverage in a harassment policy include:

- implementing appropriate dress codes, and
- day-to-day management decisions and supervisory actions, such as workplace inspections, evaluations, appraisals, instruction, work and equipment assignment, and implementing disciplinary action (provided that the purpose of management and supervisory decisions is not to discriminate against a worker on the basis of a prohibited ground).

Workers should be aware that harassment can occur even when no one intends to harass. Their conduct, comments or displays may be experienced by others as harassment even though they were not intended that way.

It is wise to include a statement in the harassment policy that advises workers to ensure that their comments, conduct or displays are inoffensive and not unwelcome to anyone. Workers can check the reactions of others in the workplace. They can ask if their behaviour is experienced as objectionable or unwelcome.

Procedure for dealing with harassment complaints/concerns

Having clear procedures is important to ensure that harassment complaints are dealt with in a consistent, competent, fair and effective manner.[9] It also increases workers' confidence that harassment complaints will be handled that way.

When creating a procedure for handling concerns, employers should consult with the OHC. These questions should be answered:

Bringing a complaint to an employer

How can a worker bring a complaint to the attention of the employer?.

The policy must explain how complaints of harassment can be brought to the attention of the employer.[10]

In some workplaces employers may state that a worker should bring his or her harassment complaint to his or her immediate supervisor or, in the event of a conflict with that supervisor, any other supervisor in the workplace. Alternatively, the policy may designate a person or a fixed set of people to receive all harassment complaints.

Any person designated to receive complaints must be adequately trained in:

[9] Section 36 of the OHS regulations require the harassment policy to include statements that may affect the procedure to be followed in dealing with a harassment complaint, but it does not direct the exact process to be used.

[10] Section 36(1)(e) of the OHS regulations.

- the importance of taking all complaints seriously and confidentially,
- the harassment policy, and
- their role in the overall process of handling complaints.

Duties of person(s) receiving a complaint

What are the duties of the person receiving the complaint?

Any supervisor who receives a harassment complaint should be aware that s/he has a duty:

- to advise the worker how s/he can bring the complaint to the attention of the employer. This may mean directing the worker to the person designated to receive complaints,
- not to discourage or prevent the worker from seeking the assistance of an OHO or from pursuing any other legal rights the worker may have,
- to take the complaint seriously. It is never appropriate for the first person receiving the complaint to ridicule or dismiss the worker's concerns,
- to keep the complaint in confidence and not disclose the complaint except in accordance with the policy or as required by law, and
- to carry out other duties that may be assigned under the policy.

Options for handling a complaint

What different options are available for handling a complaint?

Many policies give the complainant more than one option in how to proceed with the complaint. The options may include the following:

<u>The opportunity to seek information and advice</u>

Whenever a worker raises a harassment concern as a complaint or tries to obtain information and advice, the policy should state that supervisors or the person designated to receive complaints advise the complainant of:

- the options available under the policy for resolving a complaint, and
- his/her other rights referred to in the policy (see complainant's rights).

<u>Making an informal complaint – only coaching requested</u>

Sometimes a complainant may not wish to identify the harasser or ask for management's direct intervention. The complainant may want only information, advice, and the indirect assistance of management in stopping the offending behaviour from continuing.

A worker may make a complaint against an anonymous harasser, i.e., a person the worker doesn't identify.

The policy should direct the person receiving the complaint:

- to advise the complainant on the contents of the harassment policy,
- where appropriate and possible, to counsel the complainant to clearly and firmly express to the alleged harasser that the harassment is objectionable and must stop,
- to offer to indirectly intervene in stopping the harassment by arranging for all staff to attend workshops, videos and staff meetings to review the harassment policy, and
- to encourage the complainant to file a formal complaint where the matter complained of:
  - poses a serious threat to the worker's or others' health and safety
  - is criminal in nature, or
  - where the circumstances lead the supervisor to suspect that the complainant's intervention and educational activities cannot alone prevent the harassment from recurring.

Making an informal complaint – Informal intervention requested

In informal complaints, the complainant names an alleged harasser, but does not seek an admission, apology or that the alleged harasser be disciplined. Rather, the complainant seeks an agreement with the alleged harasser that s/he will not engage in certain types of offensive behaviour. An informal complaint need not be made in writing.

The policy should require the person receiving the complaint to review the options for informal resolution and assist in their use. The informal options may include:

- having separate informal discussions between the supervisor and the complainant, and between the supervisor and the respondent, and
- with the agreement of both parties, a meeting between the complainant and the respondent, facilitated by a trained and impartial person or mediator.

The supervisor should also encourage the complainant to file a formal complaint where the matter complained about:

- poses a serious threat to the worker's or others' health and safety,
- is criminal in nature, or
- where the circumstances lead the supervisor to suspect that informal discussions or facilitated mediation will not be effective in preventing the harassment from recurring, e.g., where the

supervisor is aware that the alleged harasser has a history of harassment or has previously shown angry, intimidating or irrational behaviour.

As no formal investigation or admission is required, the policy should indicate that no record of the complaint or of the agreement should be kept on either the complainant's personnel file or the alleged harasser's file. Also, an agreement should not be viewed as an admission that the alleged harasser engaged in harassing behavior.

Formal complaints and investigations

A formal complaint is one where the complainant makes a written allegation of harassment against a named alleged harasser, which:

- requires a formal investigation,
- may result in a finding that harassment has taken place, and
- imposes an obligation on the employer to take action to stop the harassment and prevent its recurrence.

Creating a process to receive and investigate formal complaints in a consistent, fair and effective manner involves many elements. These are addressed on page 14.

Other legal rights

How will the policy address a complainant's other legal rights?

Reference to the provisions of the Act respecting harassment

The harassment policy must refer to certain sections of the Act and regulations on harassment.[11] An employer may consider printing the full text of these sections in the policy, although it is sufficient if the policy simply makes reference to them.

Right to seek the assistance of an Occupational Health Officer (OHO)

The harassment policy must point out the worker's right to request the assistance of an OHO to resolve a harassment complaint. The person designated to receive the complaint should bring this right to the worker's attention.

[11] Section 3(c) of the OHS Act which concerns the employer's general duty; section 4(b) of the Act which concerns the worker's general duty; section 27 of the Act which prohibits an employer from taking discriminatory action against a worker for seeking enforcement of the Act; section 36 of the regulations which concerns the harassment policy.

Role of the OHO

A worker may choose to seek the assistance of an OHO before the employer has an opportunity to resolve the complaint. With the consent of the complainant, normally the OHO will:

- direct the employer to attempt to resolve the complaint in accordance with its policy, and
- recommend the employer take immediate action to protect the complainant from further harassment or reprisal.

If a worker chooses to seek the assistance of an OHO after the employer has attempted to resolve the matter, the OHO will investigate to determine whether the employer has complied with its harassment policy and has taken every reasonably practicable action to ensure a workplace free of harassment. From the investigation an OHO may conclude:

- the matter complained of is not harassment within the meaning of the Act or employer's policy. The OHO will not usually direct the employer to take further action, but may make recommendations as to how to resolve the matter,
- the matter complained of is not harassment within the meaning of the Act but is harassment within the meaning of the employer's policy. The officer will direct the employer to implement its harassment policy if it hasn't already done so, and
- the matter is harassment within the meaning of the Act, and it is likely to continue or be repeated. The officer will direct the employer to take action to stop the harassment from recurring.

Reference to The Saskatchewan Human Rights Code

The harassment policy must refer to the provisions of *The Saskatchewan Human Rights Code* respecting discriminatory practices and the worker's right to file a complaint with the Saskatchewan Human Rights Commission.[12]

The provisions of *The Saskatchewan Human Rights Code* regarding discriminatory practices in the workplace include sections 10, 16, 17, 18, 27 and 31 of the Code. Reference in the policy to these section numbers in the code meets the requirements of section 36(1)(h). *The Saskatchewan Human Rights Code* can be found at http://www.gov.sk.ca/shrc/human_rights_code.htm

[12] Section 36(1)(h) of the OHS regulations.

Reference to Other Legal Rights

The harassment policy must include a statement that the employer's harassment policy is not intended to discourage or prevent the complainant from exercising any other legal rights.[13]

A statement to this effect in the policy is sufficient to meet the legal requirement of the policy. However, as a best practice to ensure compliance with the spirit of this section, supervisors and others investigating or resolving complaints should know that it's not appropriate to discourage or prevent a complainant from pursuing or exercising any other rights they have.

There is no obligation on the employer or supervisor to explain what other legal rights the worker may have. It is a good practice that supervisors and employers not attempt to counsel or advise workers about other legal rights.

Formal complaints and investigations

The process for receiving and investigating a formal complaint should consider the following:

- a complaint should be made in writing and the complainant should sign it. This is the best way to ensure the complainant's concern is understood and addressed,
- many policies include a formal complaint form. It is a helpful tool to ensure that the basic relevant information is known in each case,
- once a complaint has been made, an initial assessment must occur, which will determine whether the conduct in question falls within the policy's definition of harassment. Where it is determined that the conduct does not fall within the scope of the policy, the complainant should be informed of that and his/her right to seek the assistance of an OHO,
- where the conduct complained of falls within the scope of the policy, it is necessary to determine if any immediate action is required to protect the complainant or others from further harassment, reprisal or intimidation while they wait for the investigation and resolution of the complaint,
- The policy should set out:
  - how it will be determined who will investigate the complaint, and

[13] Section 36(1)(j) of the OHS regulations.

- how an investigation is to be conducted to ensure that the process meets the requirements of the Act concerning confidentiality and fairness to all parties.

Confidentiality

An employer must not disclose the name of the complainant or the alleged harasser except where it is necessary for the purposes of investigating the complaint or taking corrective action with respect to the complaint or where required by law. A statement to this effect must appear in the harassment policy.[14] The policy should also set out how confidentiality will be maintained at every stage of the process.

This may include:

- giving direction about who will be informed of a harassment complaint at each stage of the process,
- describing the training and direction on how to maintain confidentiality that is given to persons who are designated to receive or facilitate the resolution of complaints,
- stating who will have access to the results of the investigation, and
- offering other tips for ensuring that others maintain confidentiality.

  For example:

  - at the intake stage, advising both the complainant and the alleged harasser that they should keep the matter in confidence,
  - interviewing no more witnesses than necessary,
  - cautioning witnesses not to discuss the investigation or their statement with anyone,
  - ensuring that others who participate in the process (e.g., shop stewards, mediators, supervisors and management) understand and commit to keep the process in confidence, and
  - at the reporting stage, describing who will have access to the results of the report and how it will be retained.

[14] Section 36(1)(f) of the OHS regulations requires that the harassment policy include: (f) a statement that the employer will not disclose the name of a complainant or an alleged harasser or the circumstances related to the complaint to any person except where disclosure is: (i) necessary for the purposes of investigating the complaint or taking corrective action with respect to the complaint; or (ii) required by law;

Fairness

As a best practice the policy should set out guidelines or procedures that ensure the process will be fair and appear fair to both the complainant and alleged harasser. The policy should address fairness issues such as:

Bias: How will the complainant and the alleged harasser be assured that the people who receive, investigate, or take action on the complaint are not biased?

Legal or union counsel: Both the complainant and the alleged harasser have the right to be accompanied by legal or union counsel during the investigation process. This right is not usually given to witnesses.

Right to be informed: How will the complainant and the harasser be fully informed of the harassment process, as well as their rights under the Act and *The Saskatchewan Human Rights Code?*

Full answer and defense: How will the alleged harasser be informed of the complaint and its results in a manner sufficient to entitle him or her to make a full answer and defense?

Where an investigation into a complaint is required, the alleged harasser is usually entitled to receive a copy of the written complaint. Sometimes however, a written complaint can contain unnecessarily insulting or embarrassing opinions or statements about the alleged harasser. Such statements, if known by the alleged harasser, may cause additional ill feelings and interfere with achieving a mediated resolution between the complainant and alleged harasser.

Therefore it is a good practice, when a written complaint is made, to:

- inform the complainant that a copy of the written complaint may be provided to the alleged harasser,
- have the supervisor offer assistance to the complainant in completing the written complaint to avoid it including unnecessarily insulting or embarrassing opinions or statements about the alleged harasser, and
- where an investigation is not required and a mediated or informal solution is sought, avoid giving the alleged harasser a copy of a written complaint that may contain inflammatory statements. Instead, the supervisor can provide a verbal or written summary of the incidents or conduct complained about.

Credibility of witness evidence

A fair investigation process should ensure that the evidence used to make an assessment is credible (believable). Investigators should be trained in investigative practices that include:

- interviewing witnesses separately,
- taking written statements from witnesses and allowing them to review their statements and confirm their accuracy before signing them,
- avoiding hearsay, i.e., witnesses should only be called upon to describe what they personally know or saw,
- considering witness bias, and
- avoiding witness intimidation. To avoid witness intimidation, it is a good practice to advise witnesses that their statements will not be shared with either the complainant or alleged harasser except:
  - as required by law (e.g., by subpoena or other court order), or
  - to the extent necessary to allow the alleged harasser to make full answer and defense.

Receiving a summary of the witnesses' evidence will be sufficient to allow the alleged harasser to do that in most instances.

Unnecessary delay

There should be no unnecessary delay between receiving the complaint, conducting the investigation, preparing the investigation report and taking action following the investigation.

Taking Action

Investigations will lead to a decision on whether harassment actually occurred and whether the complaint was made in good or bad faith. The action to take in these different situations is described below.

No harassment, complaint made in good faith

Advise both the complainant and harasser of the results of the investigation. Advise the complainant of his or her right to seek the assistance of an OHO or to lodge a complaint with *The Saskatchewan Human Rights Commission.*

No harassment, complaint made in bad faith

A complaint made in bad faith is where a complainant makes allegations of harassment, which the complainant knows are not true. A bad faith complaint can damage the integrity of an employer's harassment policy and can have serious negative effects in the workplace.

An employer should take action to discipline workers who make a complaint in bad faith. An employer, however, should not question the sincerity or good faith with which a complaint is made unless there is believable and persuasive evidence that the complaint was made in bad faith.

Where appropriate, an employer may also wish to inform other persons who were involved with the investigation that harassment was found not to have taken place. This action may be necessary where the reputation of the alleged harasser may be negatively affected by the complaint or investigation.

Harassment took place

Employers must take corrective action with any person who harasses another in the workplace.[15] They need to decide what they will do to stop, prevent and deter harassment. Employers' options may include action against persons in the workplace and third parties (i.e., customers, clients, contractors).

These are difficult decisions because the employer must be concerned that:

- the action is effective in stopping harassment and preventing its recurrence,
- the action is effective in protecting the complainant or others from reprisal,
- the action protects the privacy of the complainant and the harasser as much as possible,
- the action does not go against the collective agreement or any worker's employment contract, and
- Any discipline imposed on a worker is appropriate.

Employers should not fail to take the action necessary to stop the harassment because they fear the trouble and expense that may result

[15] Section 36(1)(d) of the OHS Act requires the policy to include: a commitment that the employer will take corrective action respecting any person under the policy's direction who subjects any worker to harassment;

from defending the decision. An employer's action will be defensible if it is based on a fair and competent investigation.

The harassment policy does not have to describe the exact actions employers need to take in particular situations. Creating a rigid policy will limit the employer's choice of actions. It is good practice, however, to list the types of actions employers may take if harassment is found. It demonstrates the employer's commitment to dealing with harassment. It may also strengthen workers' commitment to having a harassment free workplace.

Sample Harassment Policy for Saskatchewan Workplaces

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Using this sample policy…

Employers in consultation with the workplace's Occupational Health Committee may base their own harassment policy on this sample policy. After reading the sample policy, highlight those sections that suit your workplace. You may also add to the highlighted material, where needed, to accurately reflect the characteristics of your workplace.

Statement of Commitment

Every worker is entitled to employment free of harassment. ____ Inc. is committed to a harassment free workplace where everyone is treated with dignity and respect.

or

Every worker is entitled to employment free of harassment. ____ Inc. is committed to ensuring a productive work environment where the dignity and worth of everyone is respected. Workplace harassment will not be tolerated and ____ Inc. will take all reasonable steps to prevent harassment and stop it if it occurs.

Definition of harassment

This harassment policy extends to any objectionable conduct, comment or display by a person that:

i. is directed at a worker;

ii. is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; and

iii. constitutes a threat to the health or safety of the worker.

This type of harassment is prohibited in *The Occupational Health and Safety Act, 1993* and *The Saskatchewan Human Rights Code.*

It also extends to sexual harassment, which is conduct, comment, gesture or contact of a sexual nature that is offensive, unsolicited or unwelcome.

Sexual harassment may include:

- a threat of reprisal for refusing to comply with a sexually orientated request. The threat could be expressed directly or implied,
- unwelcome remarks, jokes, innuendoes, propositions, or taunting about a person's body, attire, sex or sexual orientation,
- displaying pornographic or sexually explicit pictures or materials,
- unwelcome physical contact,
- unwelcome invitations or requests, direct or indirect to engage in behavior of a sexual nature, and
- refusing to work with or have contact with workers on-the-job because of their sex, gender or sexual orientation, e.g., gay, lesbian.

(Personal Harassment may be defined here. An employer may choose to include a definition of personal harassment in its harassment policy - See page 7 of the Employer's Guide.)

This harassment policy does not extend or apply to:

- day-to-day management or supervisory decisions involving work assignments, job assessment and evaluation, workplace inspections, implementation of appropriate dress codes, and disciplinary action. Harassment does not include these decisions as long as they are not based on one of the prohibited grounds,
- harassment that occurs outside of work. For example, harassment that occurs during a union meeting or while attending a social gathering of co-workers after work is not covered. However, harassment that occurs while attending a conference or training session at the request of the employer would be covered within this policy, physical contact necessary for the performance of the work using accepted industry standards,
- conduct which all parties agree is inoffensive or welcome, and
- conflict or disagreements in the workplace, where the conflict or disagreement is not based on one of the prohibited grounds.

Harassment can exist even where there is no intention to harass or offend another. Everyone must take care to ensure his or her conduct or display is not offensive to another.

Employer's commitment

____ Inc. and its managers and supervisors will take all complaints of harassment seriously.

____ Inc. is committed to implementing this policy and to ensuring it is effective in:

- preventing and stopping harassment, and
- creating a productive and respectful workplace.

This commitment includes:

- *Informing all persons in the workplace of their rights and obligations.*
  - A copy of the harassment policy will be provided to all workers.
  - A copy of the harassment policy will be posted on the company bulletin board.
  - The company's policy statement on harassment will be posted in each work area in a location that is visible to all staff and the public.

- *Training all persons in implementing this harassment policy.*
  - An information meeting will be held with all staff to explain and answer questions about the new policy.
  - Supervisors will review the policy with new workers as part of their orientation.
  - Persons designated to receive, investigate or resolve complaints will be trained in their roles and responsibilities under the policy.
  - All ____ Inc. managers, directors, officers and supervisors will be asked to set a good example and help foster a respectful workplace.
  - A list of persons designated to receive complaints shall be posted on the company bulletin board.
- *Assigning responsibility for implementing this policy.*
  - Consulting with the OHC/worker representative/shop steward, ___ Inc. will designate ___ persons[1], who may receive harassment complaints and assist in facilitating their resolution.
  - Consulting with the OHC/worker representative/shop steward ___ Inc. shall designate ___ persons, who will investigate harassment complaints.
  - ___ Inc. will designate the unit managers authorized to take corrective action in accordance with this policy.
- *Protecting workers from reprisal or embarrassment for trying to stop or prevent harassment.*
  - Harassment complaints and investigations will be held in the strictest of confidence except where disclosure is necessary for the purposes of investigating the complaint, taking corrective action with respect to the complaint or as required by law.
  - Action will be taken to prevent reprisal against persons who make a harassment complaint in good faith. This may mean informing complainants and alleged harassers of this commitment.
- *Promptly taking the action necessary to stop and prevent harassment when it occurs or has occurred.*
  - Appropriate action will be taken against persons who are or were engaged or participated in harassment. This action should be sufficient to ensure the harassment stops and does not happen again.

[1] Number of persons.

- Customers, contractors or other visitors to the workplace will be informed that certain conduct directed toward staff will not be tolerated or allowed to continue.

- *The effectiveness of this policy will be reviewed in consultation with the OHC or worker representatives every ___ year(s).*

Worker's duty

All workers, including managers and supervisors employed by ____ Inc., shall[2]:

- refrain from causing or participating in the harassment of another worker, and
- cooperate with any person investigating harassment complaints.

Complaint procedure

This policy sets out three types of complaint procedures that may be used. They are procedures that apply where:

1. no alleged harasser is named, and an informal resolution is sought,
2. an alleged harasser is named, and an informal resolution or mediation is sought, or
3. an alleged harasser is named, and an investigation is required.

No alleged harasser named – informal resolution sought

Step 1
An individual reports an incident or concern to the supervisor or anyone designated to receive harassment complaints.

Step 2
The person receiving the complaint:
- reviews the complaint procedures with the complainant, and
- informs the unit manager of the complaint.

Step 3
The unit manager takes action appropriate and necessary to address the complaint. Such action may include:

- having staff meetings to discuss and review the policy, and
- providing workshops, videos or written information on the prevention of harassment.

[2] In accordance with section 4 of the OHS Act.

The unit manager informs the complainant of the action that will be taken to address the complaint or concern.

Confidentiality

___ Inc., or anyone acting on behalf of the company, should not disclose the complainant's name or other identifying information to any person. In certain circumstances the complainant may agree to release identifying information in order to implement the harassment policy, the resolution process or the final resolution itself.

Alleged harasser named – informal resolution or mediation sought

Step 1
An individual reports an incident or concern to their supervisor or anyone designated to receive harassment complaints. The complaint should be recorded in writing in a form consistent with the *harassment complaint form* attached to this policy.

Where an informal resolution is sought, the complainant should indicate the type of resolution and resolution process s/he is seeking. Examples include: an apology, supervisory counseling, a facilitated meeting with alleged harasser, workshop or training sessions, and mediation.

Step 2
The person receiving the complaint:

- reviews the complaint procedures with the complainant,
- informs the unit manager of the complaint (where it is alleged that the unit manager is involved in the harassment, the person receiving the complaint refers the matter to another manager),
- meets privately with the alleged harasser to review the complaint, and
- determines whether there is agreement on a resolution or a resolution process.

Step 3
Where there is agreement on the resolution or resolution process to be used, the person receiving the complaint:

- informs the unit manager of the agreement, and
- facilitates the agreed upon resolution or resolution process (subject to the approval of the unit manager).

Step 4
The complainant is informed that s/he may move to the formal complaint procedure:

- if the complainant, the alleged harasser, or the unit manager do not agree to a resolution process, or
- if the resolution process does not resolve the matter to the complainant's satisfaction.

Step 5
Where the complainant and alleged harasser agree to a resolution, the unit manager follows up with the complainant to ensure the agreed resolution was effective in stopping and preventing further harassment. Where the complainant indicates that the harassment has not ended, the unit manager counsels the complainant to pursue an alternate resolution process, including a formal investigation.

Confidentiality

___ Inc., or anyone acting on behalf of the company, should not disclose either the complainant's or alleged harasser's name or other identifying information to any person. In certain circumstances the complainant and alleged harasser may agree to release identifying information in order to implement the harassment policy, the resolution process or the final resolution itself.

Alleged harasser named – investigation required

Step 1
An individual reports an incident or concern to their supervisor or anyone designated to receive harassment complaints. The complaint should be in writing, be dated and contain the following information:

- the name and job title of the complainant and contact information
- the name and job title of the alleged harasser and available contact information
- a description of the conduct, display or events considered objectionable, including dates and location of events.
- the names and available contact information of any possible witnesses
- a description of the basis of the alleged harassment. (e.g., sex, age, ancestry, disability, physical size, marital status)
- the remedy sought.
- other information or material the complainant considers relevant
- the signature of the complainant"

Step 2
The person receiving the complaint:

- reviews the complaint procedures with the complainant,
- provides a copy of the written complaint to the unit manager (where it is alleged the unit manager is directly involved in the harassment, the person receiving the complaint refers the matter to another manager),
- provides a copy of the written complaint to the alleged harasser, and
- reviews the complaint procedures with the alleged harasser.

Step 3
The person receiving the complaint, the unit manager, and ___ (e.g., human resource manager) review the complaint and determine:

- whether the conduct complained about falls within the harassment policy,
- whether there are resolution options, other than investigation, that are available and acceptable to the complainant and alleged harasser, and
- who will conduct the investigation where one is required.

Step 4
Where an investigation is required, the unit manager appoints an investigator or investigation team.

The investigator(s) will:

- be trained in conducting an investigation in accordance with this policy, and
- have no apparent bias or interest in the outcome of the investigation (alternatively, the investigator will be chosen from a list of investigators approved by ___ Inc., the union, the OHC worker co-chair, or the worker representative).

Where the complainant or the alleged harasser objects to the appointment of an investigator, on the basis of bias or conflict of interest, the unit manager will appoint another investigator.

Step 5

The investigator(s) conducts an investigation in accordance with the following guidelines:

- The investigation commences and concludes as soon as reasonably possible.
- Witnesses are interviewed separately, and written witness statements are prepared.
- Witnesses are asked to review and sign their written statements.
- Witnesses are advised to keep the investigation and the identity of the complainant and alleged harasser in confidence, unless they are required to disclose them by law.
- The complainant and alleged harasser are entitled to be accompanied by legal or union counsel during the interview and investigation process.
- During the investigation process, both the complainant and the alleged harasser are entitled:

➢ to be informed of all the allegations made against them, and

➢ allowed the opportunity to make a full answer and defense.

This does not mean that either party is entitled to see or receive copies of the complete statements. Both are entitled, however, to see or receive an adequate summary of the evidence to make a full answer and defense.

Step 6

Once the investigation is complete, the investigator(s) will prepare a written report setting out:

- a summary of the evidence,
- a description of any conflict in the evidence,
- the investigator's conclusions on the facts and reasons for reaching that conclusion, and
- the recommended corrective action where harassment has been found to have occurred.

The investigator's report will be delivered to the unit manager, the complainant and the alleged harasser. The report is marked as confidential and delivered with the notation that it should be kept in confidence unless disclosure is required by law or is necessary to implement corrective action or other legal remedies.

Step 7
The unit manager:

- takes corrective action that the unit manager considers appropriate and effective,
- informs the complainant and harasser of the corrective action. Where the corrective action is different from the action recommended in the investigator's report, the unit manager should provide reasons for not taking the investigator's recommended action,
- informs the complainant of his/her right to file a complaint with The Occupational Health and Safety Division and/or The Saskatchewan Human Rights Commission

Step 8
The unit manager, after the corrective action has been taken, follows up with the complainant to ensure that the corrective action was effective in stopping and preventing harassment. If the complainant indicates that harassment has not ended, or that s/he has suffered reprisal as a result of making the complaint, the unit manager should take additional or alternative corrective action to resolve the complaint. Further investigation may be necessary.

Disclosure of investigation documents
All documents and statements obtained during the course of the investigation, including the names and copies of witness statements, should not be disclosed to any person unless required by law.

Confidentiality
___ Inc., or anyone acting on behalf of the company, should not disclose the name of the complainant or the alleged harasser, as well as any information that may identify the complainant or alleged harasser. The disclosure of such information may be necessary, however, to conduct the investigation, implement corrective action, or pursue other legal remedies.

Taking action to stop and prevent harassment

In taking action to stop harassment and prevent its reoccurrence, ___Inc. will be guided by the following considerations and options.

Individual awareness and counseling

Individuals may not be aware of the effects of their behavior. In many cases, speaking to the person in private about the inappropriate behavior will be enough to resolve a situation.

In some instances, it may be most effective and less disruptive to working relationships if the complainant informs the offending individual that s/he finds certain conduct offensive. In other instances, it may be more effective for a supervisor to speak with the offending person. At other times, a meeting between the complainant and alleged harasser facilitated by the supervisor may be appropriate.

Complainants should not be encouraged to confront the alleged harasser if:

- they are reluctant to do so,
- the alleged harassment is of a very serious nature, and/or
- the alleged harasser denies engaging in the conduct complained of.

Staff awareness and counseling

Standards of behavior change over the years. Some individuals or groups may not be aware that behavior, which was acceptable to their co-workers in the past, is not acceptable anymore. A staff awareness session may be helpful to correct problems based on lack of awareness. Relevant videos, lectures, and facilitated group discussions may increase awareness of behaviors that are unacceptable and the reasons for the changes.

Interim action

A unit manager may have grounds to believe that a complainant will be exposed to continued harassment or reprisal while waiting for the investigation or resolution process to occur. The unit manager must take immediate action to protect the worker from continued harassment or reprisal. Any interim action should respect the alleged harasser's rights based on his/her employment contract (or collective bargaining agreement). Considering these rights, the unit manager's action may include:

- cautioning the alleged harasser about the types of behavior or reprisals that will not be tolerated,
- removing the alleged harasser to another work unit,
- at the complainant's request, removing the complainant to another work unit,
- suspending the alleged harasser with pay while waiting for a final determination, and/or
- suspending the alleged harasser without pay while waiting for a final determination.

Mediation

Mediation offers both parties the opportunity to develop an understanding of the problem and resolve the complaint before or during the formal investigation process. The mediator facilitates separate discussions or joint meetings between the complainant and the respondent, for the purpose of resolving the complaint.

Mediation may take place at any point in the resolution process as long as both parties agree to participate in mediation. Where the complainant and alleged harasser agree to participate in mediation, ___ Inc. shall arrange for a person, who is trained and independent, to act as mediator.

Disciplinary action

Where it is determined that an employee has knowingly engaged or participated in the harassment of a co-worker, that employee will be disciplined. The discipline will be subject to the employee's rights under his/her employment contract or collective bargaining agreement. The severity of the discipline will depend on the:

- *seriousness of the alleged conduct:*
  - whether the conduct is an offence under the criminal code,
  - whether the conduct is an offence under *The Occupational Health and Safety Act, 1993* or *The Saskatchewan Human Rights Code*,
  - the mental or physical injury caused to the complainant by the conduct,
  - whether the harasser persisted in behavior that she/he knew or ought to have known was offensive to the complainant, and
  - whether the harasser abused a position of authority.
- *risk of the harasser continuing or engaging in similar harassment of the complainant or others in the future:*
  - whether the harasser acknowledges her/his conduct was unacceptable and makes a commitment to refrain participating in future harassment,
  - whether the harasser has apologized to the complainant or taken action to repair any harm caused by his or her conduct,
  - whether the harasser has agreed to participate in awareness sessions, training or other recommended counseling or treatment.

The discipline imposed on an employee, who was found to have engaged or participated in harassment in the workplace, may include reprimand, relocation, demotion, suspension and termination of employment.

Third party harassers

Customers (clients/patients), contractors or their workers, or other people invited to the workplace might engage or participate in the harassment of a ___ Inc. employee. ___ Inc. may have limited ability to investigate or control their conduct. However, ___ Inc. shall take reasonably practicable action to stop or reduce the risk to its workers of being harassed by third parties. This action may include:

- posting the harassment policy statement in locations visible to third parties, and/or
- requiring certain contractors and their workers to accept and meet the terms of the harassment policy. This could include removing workers, who participated in harassment, from the workplace.

Where a client or customer has been asked to stop abusing or harassing a worker and does not, workers are authorized to:

- end telephone conversations,
- politely decline service, and/or
- ask the customer or client to leave the workplace.

Malicious complaints

It is uncommon for someone to make a false claim deliberately but it may happen. Where an investigation finds a complainant has knowingly made a false allegation, the complainant will be subject to discipline.

Other options and contracts

Nothing in this policy prevents or discourages a worker from referring a harassment complaint to the Occupational Health and Safety Division under: *The Occupational Health and Safety Act, 1993*, particularly sections 3 and 4; and *The Occupational Health and Safety Regulations, 1996*, particularly section 36. A worker may also file a complaint with the Saskatchewan Human Rights Commission under *The Saskatchewan Human Rights Code*, particularly sections 16, 17, 18 and 27. A worker retains the right to exercise any other legal avenues available.

Saskatchewan Labour
Occupational Health and Safety

Regina Inquiry: 787-4496
6th Floor,
400-1870 Albert Street
S4P 4W1
Toll Free: 1-800-567-7233

Saskatoon Inquiry: 933-5052
8th Floor,
122-3rd Avenue North
S7K 2H6
Toll Free: 1-800-667-5023

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